IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1877 of 1994

With

SPECIAL CIVIL APPLICATION No. 20486 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATIONAL SPIRITUAL ASSEMBLY OFTHE BAHA'IS OF INDIA & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR SN THAKKAR for Petitioner(s) : 1 - 2.
MR SATYAM CHHAYA, AGP for Respondent(s) : 1 - 3.
RULE SERVED for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 20/11/2006

COMMON ORAL JUDGMENT

1. Rule in Special Civil Application No.20486 of 2006. Mr.Satyam Chhaya, learned AGP waives service of notice of Rule for Respondent Nos.1, 2, and 3 and Mr.Thakkar, learned Counsel waives service of notice of Rule for Respondent Nos.4 and 5. With the consent of the learned Counsel appearing for both the sides, as the issue is inter-connected the said Special Civil Application is also finally heard today with SCA No.1877 of 1994.
2. The original revenue record and the recent sketch prepared are placed before this Court for perusal by Mr.Ramesh Israni, Mamlatdar, Dang through Mr.Desai, learned AGP.
3. The short facts of SCA No.1877 of 1994 appears that it is not in dispute that the area admeasuring 100 ft. X 50 ft., which was formerly held by Gangarambhai Shukaya, is in possession of the petitioners of SCA No.1877 of 1994. It is further the case of the petitioners that the property bearing erstwhile Survey No.25/3 is the same as was held by Gangarambhai Shukaya and,

therefore, the whole property should be entered in the record in the name of the petitioners. The petitioners have proceeded on the basis that Respondent No.4 is unauthorisedly occupying the area admeasuring 136 sq. mtrs., adjacent to the land, which is in possession of the petitioners and are trying to demolish with the help of the Government authority and, therefore, the petitioners preferred SCA No.1877 of 1994.

4. The petitioner of SCA No.20486 of 2006 has approached this Court by making grievance that the land bearing Survey No.102 is allotted to her and in spite of the same, vacant possession is not available, since as per the petitioner, Respondent No.4 has made encroachment over the area, which is allotted to the petitioner and consequently she is unable to occupy and enjoy the land allotted to her. Therefore, she has approached this Court by the said petition.

5. I have heard Mr.Thakkar, learned Counsel appearing for the petitioners of ScaNo.1877 of 1994 and corresponding respondents in the other petition and I have also heard Mr.Oza, learned

Counsel for the petitioner of SCA No.20486 of 2006 and the corresponding respondent in SCA No.1877 of 1994. I have also heard Mr.Chhaya, learned AGP for the respondent State authorities in both the petitions.

6. Upon hearing the learned Counsel appearing for both the sides, it appears that it is not in dispute that the petitioners of SCA No.1877 of 1994 are holding the property, which was originally held by Gangarambhai Shukaya. Pursuant to the order dated 2.11.2006 passed by this Court in SCA No.20486 of 2006, the relevant original revenue record was called for and it transpires that the said Gangarambhai Shukaya was allotted the land as per the order dated 30th October, 1975 by the Collector, Dang and the copy of the order shows that the measurement was 100 ft x 50 ft. Therefore, Mr.Thakkar, learned Counsel appearing for the concerned petitioners, declared before the Court that his client is not desirous to continue the possession of any area, exceeding the occupied area held by the predecessor in title Gangarambhai Shukaya or

Letifbhai Siddiqbhai.

7. It further appears from the record, which produced before this Court that the original area of the Plot bearing No.25/3 comprises of the area more than what was allotted to or was occupied by Gangarambhai Shukaya and the said Gangarambhai Shukaya was holding a portion of the land admeasuring 100ft. X 50 ft., from the land bearing Survey No.25/3. It is not in dispute that the petitioners of SCA No.20486 of 2006 is allotted the land admeasuring 136 sq. mtrs., on compassionate basis vide order dated 9.7.1993 passed by the District Collector, Dang. It appears that the land allotted to the said petitioners is a part of original Survey No.25/3. It further appears from the record of the City Survey that the whole area of land bearing Survey No.25/3 is divided into two parts since the allottees were different; one portion in possession of the petitioners of SCA No.1877 of 1994 is given Survey No.25/3/B and numbered in City Survey as No.103, whereas the area which is allotted to the petitioner of SCA No.20486 of

2006 is given No.25/3/A and numbered in City Survey as No.102. However, the lands of both the plots of City Survey No.103 as well as 102 are comprising of original Revenue Survey No.25/3.

8. It further appears from the sketch, which is produced by the learned AGP prepared by the Maintenance Survey Department, that the petitioners of SCA No.1877 of 1994 have made prayer that having width of 10.50 sq. mtrs. x 60.30 sq. mtrs., approximately 72.45 sq. mtrs., whose major portion is inside the plot area of City Survey No.102 (Survey No.25/3/A).

9. I would have considered the matter for entitlement of the petitioners of SCA No.1877 of 1994 for maintaining the challenge of the action by the authority for removal of the encroachment etc., however, in view of the declaration recorded earlier by Mr.Thakkar, learned Counsel for the said petitioners, that the petitioners are also not desirous to continue with the possession of the area exceeding the area of 100 ft x 50 ft bearing City Survey No.103 (Revenue

Survey No.25/3/B), I find that the same is not required since the petitioners concerned or the occupants themselves are ready to vacate any area exceeding the aforesaid area of 100 ft. x 50 ft., and, therefore, no further discussion in this regard is required.

10. After the encroachment of the removal of the construction or the shed over the area of Plot No.102, it would be required for the authority to entrust the vacant possession of the plot admeasuring 136 sq. mtrs., to the petitioner of SCA No.20486 of 2006 since she has been allotted plot and would be entitled to occupy and enjoy the land as per the allotment order.

11. In view of the above, I find that the following directions shall meed with the ends of justice:

(a) The District Collector shall ensure that the area of 100 ft. x 50 ft., as per the City Survey Record of Plot No.103 (Revenue Survey No.25/3/B) is marked by the City Survey Office in presence of both the petitioners and the construction or the

superstructure over the Plot No.102 shall be identified, so as to enable the petitioners of SCA No.1877 of 1994 for its removal. The aforesaid exercise shall be completed within a period of four weeks from the date of receipt of the order of this Court.

(b) After the intimation is given and the offending superstructure is marked and identified, the petitioners of SCA No.1877 of 1994, if gives undertaking to the District Collector to remove the same on their own within a period of one month from such intimation, one month's time shall be granted by the District Collector to the said petitioners for removal of the said superstructure and vacating the area of plot No.102. In the event the undertaking is not given or upon expiry of the undertaking, the superstructure is not removed, the District Collector shall be at liberty to remove the superstructure and get the vacant possession of the area of plot No.102 as per the sketch

prepared by the Maintenance City Surveyor of the City Survey office, copy whereof is produced by the learned AGP. The action of removal of the encroachment and taking over the vacant possession shall be completed within six weeks from the expiry of the period of one month within which the area is to be marked and identified as indicated earlier.

(c) After the removal of encroachment or the structure as the case may be, the vacant possession of the land bearing City Survey No.102 (Revenue Survey No.25/3/A) shall be handed over within two weeks thereafter by the Officer, who may be nominated by the District Collector for such purpose and after the possession is handed over of plot No.102, the petitioner of SCA No.20486 of 2006 shall be at liberty to take protective measure for protecting her possession of the land by fencing etc., and the development as may be permissible in

law.

12. The petitions are disposed of in terms of the aforesaid directions. Rule discharged subject to the aforesaid directions in SCA No.1877 of 1994. Rule made absolute to the aforesaid extent in SCA No.20486 of 2006. It is clarified that the aforesaid direction shall not invest any additional right to the petitioners of SCA No.1877 of 1994 for entitlement and enjoyment of the property originally held by Gangarambhai Shukaya. Considering the facts and circumstances, there shall be no order as to costs.

20.11.2006 **(Jayant Patel, J.)**

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